

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/2003

Re: Property at 183 Yarrow Terrace, Dundee, DD2 4DY (“the Property”)

Parties:

Mrs Stacey Taylor, 88 Tullideph Road, Dundee, DD2 2JF (“the Applicant”)

Ms Sandra Craig, 183 Yarrow Terrace, Dundee, DD2 4DY (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order should be granted.

Background:

On 3 August 2018 the Applicant through her solicitors Thorntons Law LLP made an application to the Tribunal for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The Applicant lodged with the application the Short Assured Tenancy Agreement dated 31 May 2017 as well as a copy of the AT5, the Notice to Quit dated 3 May 2018 and S 33 Notice dated 3 May 2018 and the tracked recorded delivery confirmation of service of these on the Respondent on 9 May 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

The application was intimated to the Respondent on 10 September 2018 and a Case Management Discussion fixed for 2 October 2018, which was attended by Ms Deng solicitor for the Applicant, Ms Menzies from the Dundee North Law Centre for the Respondent and by the Respondent Miss Craig.

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The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules). No representations were received from the Respondent prior to the Case Management Discussion and the Tribunal had not received prior intimation in terms of Rule 10 of the Rules that the Respondent was to be represented. However, a signed Mandate was provided by Ms Menzies and the Respondent was in attendance confirming their authority to act on her behalf. The Applicant was not present but was represented by Miss Deng from Thorntons Law LLP.

Immediately prior to the hearing the Respondent's representative lodged a letter with the clerk dated 2 October 2018, which was also given to the Applicant's representative.

The Hearing:

Ms Deng for the Applicant stated that the tenancy for the property is a Short Assured Tenancy . She referred the Tribunal to the documentation lodged with the application showing that a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 (the Act) had been served on the Respondent by recorded delivery on 9 May 2018 with notice to the ish of 31 July 2018, giving in fact more than the required 2 months notice in terms of S 33 of the Act. She moved for an order for repossession of the property.

The letter from Dundee North Law Centre from Ms Menzies confirmed the position that the facts of the case were not in dispute and that there is no substantive defence offered to the ground of eviction. It is accepted that the tenancy is a Short Assured Tenancy and that the notices appear to be in order. However, the letter sets out a request to the tribunal to delay implementation of the order due to the problems of the Respondent in finding appropriate accommodation due to her medical condition. The letter is referred to for its terms and held to be incorporated herein.

No medical report was lodged. No case law produced to refer the tribunal to similar cases with regard to suspension of issuing an extract of the order for enforcement and no evidence was lodged to confirm that the Council considers the Respondent can only be housed in a level access property. No prior notice was given of these averments until the day of the Case Management Discussion.

The Respondent's solicitor argued that there is a common law power for the tribunal to delay enforcement of an order and that this was an exceptional case because of the Respondent's alleged physical disability. She was seeking a delay of enforcement of the order for 3 months on the basis that this would enable to Council to carry out the homelessness assessment and that there was an appointment scheduled for next Friday with the Local Authority. She

argued that the Local Authority will not take action until an order has been granted and that the Respondent will have difficulty finding suitable alternative accommodation in the time available and that if the enforcement is not delayed the Council may house the Respondent in unsuitable accommodation until something suitable to her needs is identified. The Respondent is asking for more time to find alternative accommodation, which, due to her physical problems, may take longer than usual. No rent arrears are accruing. The Respondent confirmed that her current accommodation was on the first floor and that she could manage that. She stated that she had found the current accommodation through Homefinders but had not been able to do so at this stage for alternative accommodation as she was told by Homefinders that there was no reference from the landlord, although the Applicant had told her she had provided a reference but could not recall to whom.

The solicitor for the Applicant was unable to comment on this but stated it would be in the landlord's interest to provide a reference and if this was required to assist the Respondent she would be sure this would be provided. She also argued that the Respondent had almost 5 months notice of the position as she had been served with the S33 notice and notice to quit on 9 May 2018 and that suspending or delaying the enforcement date would only allow the Council to delay acting as it was her understanding that the Council will only act in providing a homelessness assessment once an order has been granted. She confirmed that a further period of at least 6 weeks would pass before the order can be enforced in normal circumstances taking into account the eviction process and argued that it is not the responsibility for the landlord how alternative accommodation is found but that of the Local Authority.

The solicitor for the Applicants referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the Case Management Discussion and the facts of the case in terms of the test of S 33 of the Housing (Scotland) Act 1988 were clear.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a Short Assured Tenancy on 31 May 2017 with an end date at 31 November 2017 (Clause 8) with a continuation on a monthly basis (Clause 10).**
- 2. Notice to Quit was served on the Respondents by Recorded Delivery on 9 May 2018 advising of the termination of the tenancy on the ish on 31 July 2018.**
- 3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by Recorded Delivery on 9 May 2018 advising of the intention to repossess the premises on 31 July 2018.**

4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondent had remained in the property at the date of the hearing.
6. No medical certificate or report was lodged to confirm any physical disability of the Respondent.
7. No correspondence or documentation was lodged to confirm that the Council will only house the Respondent in a level access property.
8. The Respondent had previously been able to find private rented suitable accommodation and has been residing in private rented accommodation under this tenancy.

Reasons for the Decision:

The Tribunal made the decision on the basis of the written evidence lodged by the Applicants and the evidence given at the Case Management Discussion by the Respondent. There was no dispute about the facts of the case regarding the test for an order.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

In this case there was not dispute that the tenancy is a short assured tenancy which had reached its original ish on 31 November 2017 and continued thereafter month to month. Notice to Quit with the required 40 days notice period was served on 9 May 2018 for the ish on 31 July 2018 and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period on 9 May 2018 to 31 July 2018.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicants in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the application.

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The only other matter for the tribunal to consider was whether or not this is a case where the tribunal could delay enforcement of the order as requested by the Respondent's representative.

Both legal representatives agreed that the order must be issued and that thus a decision has to be made as to when this can be enforced when the order is made. This is not a matter that could be delayed to a further date and accordingly I considered that it was not appropriate to delay a decision in this matter to a future date.

The Applicant by law is entitled to an order for possession if they follow the correct procedure. I consider that this indicates that the order should be enforceable as soon as the order is made and that the Act envisages that the landlord should then be able to enjoy the property they are entitled to repossess.

I am not aware of and was not provided with any case law or any decision from the Tribunal or a Sheriff Court allowing suspension of an order in cases under S 33 of the Housing (Scotland) Act for private rented accommodation. There was no case law lodged or even referred to which would have provided further assistance in this matter.

Even if one was to interpret S 33 (4) , which states "Where the Sheriff makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that time shall end (without further notice) on the day on which the order takes effect" as an indication that the date the order takes effect is not set in stone and thus within the discretion of the Sheriff, or now the Tribunal, or that there is a common law power for the Sheriff and now the Tribunal to consider exceptional circumstances under which enforcement could be suspended, one would still have to consider whether in this case such exceptional circumstances have been evidenced. I do not consider this to be the case.

The solicitor for the Respondent argued that the physical disability of the Respondent as such would make it more difficult for her to find alternative accommodation and asked that this be considered exceptional circumstances. However, no proof of any medical condition or an assessment that only very specific accommodation could be considered was provided. There was no evidence provided that the Council would have advised that the process would take longer than normal and the Respondent's solicitor had even pointed out that the Local Authority if necessary would rehouse the Respondent in accommodation as close to her needs as possible until a completely suitable house could be found. The Respondent had not made a request to postpone the Case Management Discussion to obtain further evidence and had not lodged any documents prior to the Case Management Discussion having been advised that a decision could be made.

The Respondent currently resides in private rented accommodation in a first floor property and confirmed that she can manage one flight of stairs. The

Respondent was fully aware of the type of tenancy she entered into and had so far almost 5 months to find alternative accommodation. The Applicant's solicitor had confirmed that a further period of at least 6 weeks would pass before the order can be enforced in normal circumstances taking into account the eviction process and that it is not the responsibility for the landlord how alternative accommodation is found but that of the Local Authority.

This period will give the Respondent further time to find accommodation and she already has an appointment for next Friday with the Local Authority.

The Local Authority will be assessing the situation once the order is granted and even following the argument of the Respondent's solicitor will provide accommodation and ultimately suitable accommodation. In her own argument the premises the Respondent resides in at present would not be considered suitable by the Local Authority and thus the Respondent is essentially asking to be able to remain in accommodation that is allegedly assessed as unsuitable for her. On the basis of the evidence provided I consider that Respondent is in the same situation as many other tenants having to find suitable alternative accommodation. The process for this is set out in legislation and gives the Local Authority statutory responsibilities to assess and assist.

On the other hand the landlord has a statutory right to obtain possession of the premises in terms of S 33 (1) and it was clearly envisaged by both parties that if the process is followed correctly the tenancy can be brought to an end without the landlord having to prove any further reasons for this. The property is the property of the landlord who has a right to deal with it as he or she sees fit once the tenancy comes to an end. The Respondent was aware that in this type of tenancy the tenancy can be brought to an end by serving the correct notices and had agreed to enter into a Short Assured Tenancy having been provided with that information.

Ultimately no authority was provided to show under which circumstances the Tribunal would have to delay enforcement and even if I considered that there is a common law power to suspend enforcement in exceptional circumstances, no evidence was provided that would show that this is an exceptional case and that it would be appropriate to delay enforcement of the order.

Decision:

The Tribunal makes an order for possession of the Property under S 33 (1) of the Housing (Scotland) Act 1988.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the

party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Petra Hennig-McFatridge

Legal Member

2.10.18

Date